

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA,

NO. CV-12-0156-EFS

Plaintiff,

v.

10 CITY OF SPOKANE, a municipal
corporation in and for the State
11 of Washington; and ANNE E.
KIRKPATRICK, a single person,

Defendants.

I. INTRODUCTION

On February 20, 2014, the Court heard from counsel as to Defendants' Motion for Summary Judgment, ECF No. 71. On February 28, 2014, the Court granted summary judgment dismissing Plaintiff's breach of contract and promissory estoppel claims and taking the remainder of the claims under advisement.

II. BACKGROUND

The Court previously set forth, and herein incorporates, the factual and procedural recitation in the previous Order, ECF No. 160.

III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. Legal Standard

Summary judgment is appropriate if the "movant shows that there is no genuine dispute as to any material fact and the movant is

1 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
2 Once a party has moved for summary judgment, the opposing party must
3 point to specific facts establishing that there is a genuine dispute
4 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
5 the nonmoving party fails to make such a showing for any of the
6 elements essential to its case for which it bears the burden of proof,
7 the trial court should grant the summary judgment motion. *Id.* at 322.
8 "When the moving party has carried its burden under Rule [56(a)], its
9 opponent must do more than simply show that there is some metaphysical
10 doubt as to the material facts. . . . [T]he nonmoving party must come
11 forward with 'specific facts showing that there is a genuine issue for
12 trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
13 574, 586-87 (1986) (internal citation omitted) (emphasis in original).
14 When considering a motion for summary judgment, the Court does not
15 weigh the evidence or assess credibility; instead, "the evidence of
16 the non-movant is to be believed, and all justifiable inferences are
17 to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
18 242, 255 (1986).

19 **B. Discussion**

20 Defendant seeks summary judgment on all of Plaintiff's eleven
21 claims. At the February 20, 2014 hearing, Plaintiff withdrew his
22 Fifth (Emotional Distress), Sixth (Negligence), Seventh (Outrage), and
23 Eleventh (Equitable Estoppel) Claims. On February 28, 2014, the Court
24 granted summary judgment dismissing Plaintiff's breach of contract and
25 promissory estoppel claims. The Court now addresses Plaintiff's
26 Eighth Claim, wrongful withholding of wages.

1. Eighth Claim: Wrongful Withholding of Wages

2 Plaintiff alleges that Defendants wrongfully withheld his wages
 3 in violation of Washington Revised Code §§ 49.48.010, 49.52.050, and
 4 49.52.070, and is therefore entitled to double compensation. ECF No.
 5 1. Defendants seek summary judgment arguing the action is not ripe
 6 and that there is a fairly debatable dispute over whether wages should
 7 be paid. Plaintiff maintains that Defendants wrongfully terminated
 8 his employment for having a disability, violating § 49.52.50 entitling
 9 Plaintiff to double compensation under § 49.52.070.

10 However, "Washington courts have not extended RCW § 49.52.050 to
 11 situations where employers violate anti-discrimination statutes.
 12 Rather, violations of § 49.52.050 have been upheld where an employer
 13 consciously withholds a quantifiable and undisputed amount of accrued
 14 pay." *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1203 (9th Cir. 2002)
 15 (citing *Ellerman v. Centerpoint Prepress, Inc.*, 22 P.3d 795, 798
 16 (2001) (failure to pay wages); *Schilling v. Radio Holdings, Inc.*, 961
 17 P.2d 371, 377 (1998) (failure to issue regular paychecks)). In
 18 *Hemmings*, where the jury found that the defendant willfully and
 19 intentionally violated federal and state anti-discrimination statutes,
 20 the Ninth Circuit reversed the district court's judgment that double
 21 damages were available under RCW § 49.52.070. *Id.* at 1204. Here,
 22 neither party has provided, and the Court has not found, any
 23 Washington Supreme Court decision, or change in the applicable
 24 statutes, indicating that a change in the law has occurred since the
 25 Ninth Circuit's decision in *Hemmings*. See *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 524 (9th Cir. 1989) ("In interpreting state law,

1 federal courts are bound by the pronouncements of the state's highest
2 court."). Accordingly, the Court finds that under the law of
3 Washington, Plaintiff's claims do not set forth a basis to find a
4 violation of RCW § 49.52.050 or to receive double compensation under
5 RCW § 49.52.070. Therefore, Defendants' Motion for Summary Judgment
6 as to Plaintiff's Eighth Claim, wrongful withholding of wages, is
7 granted.

8 **IV. CONCLUSION**

9 **IT IS HEREBY ORDERED:** Defendants' Motion for Summary Judgment,
10 **ECF No. 71,** is **GRANTED IN PART** (Plaintiff's Eighth Claim) and **TAKEN**
11 **UNDER ADVISEMENT IN PART** (Plaintiff's First, Third, Fourth, and Ninth
12 Claim).

13 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
14 Order and provide copies to all counsel.

15 **DATED** this 3rd day of March 2014.

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s/ Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge
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